



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FAUQUIER COUNTY
FOR
FAUQUIER COUNTY SOLID WASTE MANAGEMENT FACILITY
Solid Waste Permit No. 149**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the Fauquier County, regarding the Fauquier County Solid Waste Management Facility for the purpose of resolving violations of the Virginia Waste Management Act and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" or "Landfill" means the Fauquier County Solid Waste Management Facility located at 6438 College Street in Warrenton, Virginia, which is owned and operated by Fauquier County.
5. "Fauquier" means Fauquier County, a political subdivision of the Commonwealth of Virginia. Fauquier County is a "person" within the meaning of Va. Code § 10.1-1400.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
9. "Permit" means Solid Waste Permit (SWP) No. 149 which was issued under the Virginia Waste Management Act and the Regulations to Fauquier County on February 4, 1974.
10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. On February 4, 1974, Fauquier was granted a permit to operate a Sanitary Landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ.
2. Fauquier began operating the Facility in 1975. Fauquier stopped accepting municipal solid waste at the Facility in 1996. Fauquier continued to accept construction and demolition debris from surrounding Virginia counties through June 2007. Since 2011, Fauquier has mined and recycled construction and demolition debris from the Facility. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.
3. On February 10, 2016, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit.

Based on the inspection and follow-up information, Department staff made the following observations:

- a. Leachate was observed seeping from the eastern, western, and southern slopes of the Facility. The leachate seeping from a portion of the southern and western slopes of the Facility flowed into a drainage ditch which flowed into an unnamed water body that appeared to flow into Mill Run. The leachate seeps on the eastern and portions of the southern slopes of the Facility appeared to flow into sedimentation basins located onsite. Fauquier did not have a VPDES permit for this discharge.
 - b. Soil and straw were observed as measures taken by Fauquier to minimize leachate seeps, however DEQ staff observed ongoing leachate seeps leaving the landfill area and flowing into a drainage ditch which flowed into an unnamed water body that appeared to flow into Mill Run, at the time of the inspection.
 - c. DEQ records indicate that Fauquier failed to provide DEQ with oral notice within 24 hours, and written notice within five days of when the leachate seeps were first observed.
4. 9 VAC 20-81-140(A)(6)(a) states that Landfills shall not allow leachate from the landfill to drain or discharge into surface waters except when treated onsite and discharged into surface water as authorized under a VPDES Permit.
 5. 9 VAC 20-81-210(F) states that if a leachate seep(s) occurs, the owner or operator shall repair the seep(s) and do the following: 1. Take all immediate steps necessary to protect public health and safety including those required by the contingency plan. 2. Take immediate action to minimize, control, or eliminate the seep, and to contain and properly manage the leachate at the source of the seep. 3. Any leachate released outside the lined area permitted for waste disposal shall be properly collected and disposed.
 6. 9 VAC 20-81-530(C)(3) states that the permittee shall report to the department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five business days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the circumstances and its cause; the period of the occurrence, including exact dates and times, and, if the circumstance has not been corrected, the anticipated time it is expected to continue. It shall also contain steps taken or planned to reduce, eliminate, and prevent reoccurrence of the circumstances resulting in an unusual condition or noncompliance.
 7. On February 19, 2016, based on the inspection and follow-up information, the Department issued a Notice of Violation to Fauquier for the violations described in paragraphs C(3) through C(6), above.

8. On February 26, 2016, Fauquier submitted a written response to the NOV. On March 10, 2016, Department staff met with representatives of Fauquier to discuss the violations, including Fauquier's written response.
9. The County submitted an updated Leachate Management Plan to DEQ dated August 22, 2017. The plan consisted of a phased approach for controlling leachate which includes, at minimum, secondary and tertiary phases in order to effectively manage the leachate from SWP 575 and SWP 149.
10. Based on the results of the February 10, 2016 and the March 10, 2016, meeting, the Board concludes that Fauquier has violated 9 VAC 20-81-140(A)(6)(a), 9 VAC 20-81-210(F), and 9 VAC 20-81-530(C)(3), as described in paragraphs C(3) through C(6), above.
11. In order for Fauquier to return to compliance, DEQ staff and representatives of Fauquier have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Fauquier County, and Fauquier County agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$18,375.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Fauquier County shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Fauquier County shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Fauquier County for good cause shown by Fauquier County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Fauquier County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Fauquier County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Fauquier County declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Fauquier County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Fauquier County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Fauquier County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Fauquier County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Fauquier County. Nevertheless, Fauquier County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Fauquier County has completed all of the requirements of the Order;
 - b. Fauquier County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Fauquier County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Fauquier County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Fauquier County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Fauquier County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Fauquier County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Fauquier County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Fauquier County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 30th day of November, 2017.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Fauquier County voluntarily agrees to the issuance of this Order.

Date: 10-25-17 By: [Signature], County Administrator
(Person) (Title)
Fauquier County

Commonwealth of Virginia

City/County of Fauquier

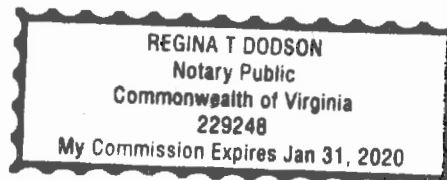
The foregoing document was signed and acknowledged before me this 26th day of October, 2017, by Paul S. McCulla who is County Administrator of Fauquier County on behalf of Fauquier County.

[Signature]
Notary Public

229248
Registration No.

My commission expires: Jan 31, 2020

Notary seal:



APPROVED AS TO FORM
[Signature] 10/25/17
COUNTY ATTY. DATE

APPENDIX A SCHEDULE OF COMPLIANCE

Fauquier County shall:

1. Submit to DEQ for review within 90 days of DEQ's approval of this Schedule an unstamped design drawing providing for a leachate collection system to be constructed in the field based upon the location of probable seeps that consolidate affected sumps into a series of 8,000 gallon tanks. The tanks shall be pumped out on a routine basis to prevent them from overflowing. The system will be expanded as-needed to address future problematic seep areas. The components of the system, including but not limited to, sub-drains, tank design, and any appurtenances, shall be confirmed by a qualified engineer to be acceptable for landfill usage and compatible with closure design. The County shall install the tanks and sub-drains and begin utilizing the collection system within 90 days of receipt of approval of the unstamped design by DEQ, weather permitting, or as soon thereafter as practicable in the event installation is not feasible due to contractor availability and weather conditions. Notwithstanding the foregoing, the County agrees that all work shall be completed no later than one year from the date of this Agreement and as expeditiously as possible. The County shall submit an as-built engineered drawing of the collection system upon its completion to be included in the Closure Plan.

2. Submit an updated Closure Plan for SWP 149 to DEQ for review within 180 days of DEQ's approval of this Schedule. In the event that the Closure Plan for SWP 149 discloses a necessity for revisions to the closure plan for SWP 575, such revisions shall also be submitted by June 20, 2018.

3. The County shall, subject to any necessary permit revision, be authorized on an interim basis to lower and smooth landfill 149 by grading and filling the valley with soil, concrete, glass and fines on a pre-closure basis.

4. Contact

Unless otherwise specified in this Order, Fauquier shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
13901 Crown Court
Woodbridge, VA 22193